

REMARKS

Claims 1-87 remain in this application, of which Claims 1, 16, 37, 45, 59, 84 and 86 are independent. Claims 1, 10, 16, 33, 34, 37, 40, 45, 46, 55, 59, 62, 69, 78-80, 84 and 86 have been amended to define still more clearly what Applicant regards as her invention, in terms which distinguish over the art of record.

In the last Office Action, Claims 1-4, 6, 7, 11-17, 24-26, 29-33, 37, 39, 41-45, 51-55, 59, 63-68 and 83-87 were rejected under 35 U.S.C. § 103(a) as being obvious from *Potts* and *Sethi*, in view of the Murphy article. Claims 34-36 and 56-58 were rejected under Section 103(a) as being obvious from those three documents taken together with *Morag*. Claims 5/1, 5/2, 8/1, 8/2, 9/1, 9/2 10/1, 10/2, 18/16, 18/17, 19/16, 9/17, 20/16, 20/17, 21/16, 21/17, 22/16, 22/17, 23/16, 23/17, 27, 28, 38, 40, 46-50, 60-62 and 69-79 were rejected under Section 103(a) as being obvious from *Potts*, *Sethi* and *Murphy* in view of *Chandler*, and Claims 80-82 were rejected under Section 103(a) as being obvious from *Potts*, *Sethi*, *Murphy* *Chandler*, in view of *Morag*.

Applicant notes that each of the independent claims refers to classification being performed based on the relative size of a face with respect to a digital image containing the face, and recites that the classification is performed independently of any distance measured between the face and the capture device that recorded the digital image, and submits that this feature, at the very least, is not taught or suggested by the art of record.

Moreover, with respect to the comments in the Advisory Action in the first paragraph of page 4, regarding Claims 16 and 86, it is not understood how the expressed interpretation can be supported. Claims 16 and 86 refer to classification based on “the

relative position of the face with respect to the image frame”. In the Advisory Action, the position of the located face appears to be equated with the size of the located face with respect to the size of the image. The Examiner’s view is not at all understood. It seems plain that position and size are entirely different characteristics, and that, for example, two frames might contain faces of quite different sizes, but each positioned squarely in the center of the frame. According to the Examiner’s view those faces should apparently be deemed to differ from each other in position because they are different in size, even though they are both located at the frame center. Again, two faces that are identical in size, shape and the like, but one in the upper right hand corner of its frame and the other exactly in the center, should somehow be considered to be identical in position because they are the same size, even though they differ in location.

Claim 16, for example, includes no discussion regarding the size of the face and it follows that the size of the face arranged at any position can vary greatly and such will not be determinative of the relevant classification. What is used in the classification is the actual position within the image frame. For example, a small face or a large face, both centered in the image frame, will each be classified as an “eye level” shot and therefore will attract the same classification.

In contrast, where two images each have a face of the same size, and those faces are in the top and bottom respectively of the image frame, then according to these claims, those images will not be classified according to the same shot type. The Examiner is referred to the description at pages 8 and 9 for exemplary description.

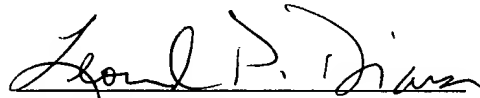
It is strongly believed that any rejection based in any part on this erroneous equation of position and size is plainly improper and should be withdrawn.

The other claims in this application are each dependent from one or another of the independent claims, and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

Early and favorable continued examination of the present application is respectfully requested.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Leonard P. Diana", written over a horizontal line.

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